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ABSTRACT

This monograph contains seven papers from a workshop for pre- and in-service administrators and teachers serving special needs students. In "Identification Factors and Criteria for Determining Disadvantaged: Definition of Terms" Edgar I. Farmer, Sr., sets workshop parameters and defines terms. Royce Bland, in "Suggested Techniques for Handling Discipline Problems," suggests that appropriate motivational techniques and respect for the student help alleviate discipline problems. In "Self-Esteem--An Alternative to Substance Abuse" Yvette P. Bogan chronicles behavior of a young female drug abuser as she develops a more positive self-image. She postulates that drug abuse is the result of a poor self-image. In "Working with Handicapped Students Who are Disadvantaged" Arlington Chisman reviews some exercises that may be useful to teachers of handicapped students. Robert B. Pyle, in "Performance-Based Individualized Instruction to Motivate Special Needs Students," offers practical advice for establishing a performance-based program. Frederick G. Welch suggests six effective techniques for teachers to motivate disadvantaged students ("Motivating the Disadvantaged Youth"). "Contemporary Legal Issues and How They Impact upon the Educator," by David G. Carter, is an extensive look at this area of concern. Appendixes include discipline and counseling techniques. (YLB)

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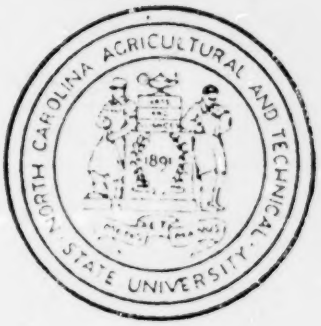

SERVING SPECIAL NEEDS POPULATIONS: THE DISADVANTAGED

A COMPILATION OF PAPERS

EDITED BY

EDGAR I. FARMER
&
RONALD O. SMITH

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"SERVING SPECIAL NEEDS POPULATIONS: THE DISADVANTAGED"

A COMPILATION OF PAPERS
PRESENTED IN A WORKSHOP CONDUCTED
DURING THE SUMMER OF 1980

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of Industrial Technology, Course Instructor
and Workshop Coordinator

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1. Dr. Ronald O. Smith, Assistant Vice Chancellor for Continuing Education and Summer School, for funding, editorial assistance, and writing the Introduction.

2. The workshop presenters for their participation in writing the manuscripts concerning the special needs students.

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4. Ms. Barbara W. Farmer and Ms. Janice Nichols for their hard work of critical reviews and preparation for the printer.

Edgar I. Farmer

SERVING SPECIAL NEEDS STUDENTS: THE DISADVANTAGED

INTRODUCTION

Education programs in our universities and colleges normally prepare teachers to teach in a mythical "Middle American" school. Little, if any, attention is given to the preparation of teachers who will work in the urban schools or in those areas where the students do not hold those "Middle American" values. For the teachers placed in this situation, this is unfortunate (and for students finding themselves with such a teacher, it is even more unfortunate). These teachers find themselves totally unprepared for what faces them. They suffer from feelings of inadequacy, become hostile, and after a year or two they experience career "burn-out."

The workshop, for which these papers were prepared, was developed to provide teachers, both pre-service and in-service, with insights from persons at the University, grade school levels, and community agencies who have had extensive experience in working with disadvantaged youth.

The workshop was held during the second session of Summer School in 1980. Dr. Edgar I. Farmer, Sr., Associate Professor in the Division of Industrial Education and Technology was the course instructor and coordinator of the workshop. His paper entitled, "Identification Factors and Criteria for Determining Disadvantaged: Definition of Terms," sets the parameters and defines the terms for the selected authors.

Dr. Royce Bland, Principal of Peninsula Vocational Educational Center in Hampton, Virginia, made the record presentation in which he concludes that appropriate motivational techniques and respect for the student helps to alleviate discipline problems.

The third presentation, "Self-Esteem - An Alternative to Substance Abuse," was made by Ms. Yvette P. Bogan, Director of the Prevention and Education Unit of the Greensboro Drug Action Council. She chronicles the behavior of a young female drug abuser as she becomes more aware of her feelings about herself - developing a more positive self image. Ms. Bogan postulates that drug abuse often is the result of a poor self image.

Dr. Arlington Chisman, Chairman of the Department of Industrial Technology, reviews some exercises which may be useful to teachers of handicapped students, both "disadvantaged" and "advantaged" in his paper "Working with Handicapped Students . . ."

Dr. Robert B. Pyle, Professor of Industrial Technology, in his paper entitled, "Performance Based Individualized Instruction to Motivate Special Needs Students," offers some very practical advice to the teacher in establishing a performance based instructional program.

Dr. David G. Carter, Sr., Associate Dean of the School of Education at the University of Connecticut, has prepared an extensive paper on "Legal Issues ..." which in these "litigious times" should be of interest to all teachers.

Finally, Dr. Frederick G. Welch, Professor in Charge of the Vocational Industrial Education program at the Pennsylvania State University, suggests six effective techniques for teachers to motivate disadvantaged students in his paper entitled, "Motivating the Disadvantaged Youth."

The Office of Summer School and Continuing Education was very pleased to have sponsored this program and to produce these proceedings.

Ronald O. Smith, Ph.D.
Assistant Vice Chancellor for
Continuing Education and
Summer School

IDENTIFICATION FACTORS AND CRITERIA FOR DETERMINING DISADVANTAGED: DEFINITION OF TERMS

Edgar I. Farmer, Sr.

INTRODUCTION

Over the past decade, there has been a considerable amount of attention directed toward persons categorized as being disadvantaged--in terms of being culturally, economically, educationally, and socially deprived. The Second Annual Report of the National Advisory Council on Vocational Education (November 15, 1969) recommended that strong priorities be given to disadvantaged persons. A person may be considered as being disadvantaged in one or a combination of these categories. For example, one may be culturally as well as educationally deprived or socially and economically deprived.

Unfortunately, many states still appear to be moving rather slowly in addressing the needs of disadvantaged persons. One of the major reasons for this dilemma stems from the conflict in definitions and types of disadvantaged persons. Another reason deals with the criteria for determining the various types or categories of being disadvantaged.

DEFINITION OF TERMS

The following definitions may be used when referring to persons who are categorized as being disadvantaged.

1. DISADVANTAGED: The term disadvantaged refers to those persons who deviate intellectually, economically, or socially from what is considered to be normal growth and development.

2. CULTURALLY DISADVANTAGED: A culturally disadvantaged person is one whose values, behavioral patterns and aspirations are different from those of the prevailing social class. Many culturally disadvantaged persons tend to isolate themselves from other groups because of their different life styles and language patterns.

Some criteria for determining whether a student is culturally disadvantaged are: those who have not acquired acceptable minimum standards of behavior and respect for others; those who have adopted a non-conformist attitude; and those who have not mastered acceptable forms of interpersonal relationships.

3. ECONOMICALLY DISADVANTAGED: An economically disadvantaged person is one who has been characterized by unemployment, underemployment, and unmeaningful jobs or dead-end jobs which compel him/her to function at or below poverty levels.

Some criteria for determining whether a student is economically disadvantaged are: those from families plagued with employment problems and those who must contribute financially to their families in order to assist in maintaining the household.

4. EDUCATIONALLY (or ACADEMICALLY) DISADVANTAGED: An educationally disadvantaged person is one who has been characterized as having a poor educational background, exhibiting a lack of motivation, and severely deficient in basic skills.

Some criteria for determining whether a student is educationally disadvantaged are: those who have failed two or more grade levels; persons receiving inadequate motivation from home, and those who are below average in the basic educational and communication skills.

5. SOCIALLY DISADVANTAGED: A socially disadvantaged person is one who has experienced difficulty in interacting with the dominant group.

POVERTY INCOME GUIDELINES FOR ALL STATES
EXCEPT ALASKA AND HAWAII

SIZE OF FAMILY UNIT	NON FARM FAMILY	FARM FAMILY
1	$3,400	$2,910
2	4,500	3,840
3	5,600	4,770
4	6,700	5,700
5	7,800	6,630
6	8,900	7,550

In a non-farm family, family units with more than six members should add $1,100 for each additional member. Those with more than six members in a farm family should add $930 for each additional member (CETA, P.L. 95-254).

NOTE: The above figures are subject to change according to the nation's economy.

Many of the difficulties tend to stem from ones low social class status. Some criteria for determining whether a student is socially disadvantaged are: those who are unable to establish and/or maintain acceptable relationships with others; those who are victimized by ethnic pressures, and those who are victimized by the lack of desirable home and community environments.

SUGGESTED TECHNIQUES FOR HANDLING DISCIPLINARY PROBLEMS

Royce Bland

INTRODUCTION

It is hoped that this paper will help achieve the needed balance between regimentation and authoritarian discipline. Discipline is a prerequisite to classroom learning and students who are well disciplined direct their interests, efforts and abilities toward greater achievement.

BRIDGING THE CULTURAL GAP

In teaching the disadvantaged student, teachers should remember that they, too, are at a disadvantage because they may not be a member of, and probably do not understand, the culture with which they are dealing. Simply because ones values and culture do not agree with another's does not make the "other" group "wrong." One may in fact learn a great deal about oneself and life through an honest attempt to understand the culture of others. Before teaching, it helps if there exists a mutual respect and acceptance by the teacher of the student and the student of the teacher. Sometimes the accepted values of a culture different in areas which are very important to a middle class teacher. Some people (students) who have potential to really change the world may exhibit behavior such as: cheating, stealing, lying, extreme violence, poor attendance, lack of responsibility, hostile attitude toward school, teachers, other students, etc. Teachers do not have to accept this

behavior, but can accept the child as a human being worthy of time and consideration and love.

The "disadvantaged" (I hate the word; it makes people sound sub-human or something.) are not going to embrace truth and goodness, start being on time, accept responsibility, and love learning simply because you work with them for several weeks. They will grow slowly. These students need to know that the teacher cares for them personally. Many times disadvantaged students touch their teachers, tug on their arms, pull their hair, or pat their backs. Teachers might respond to this behavior with a smile--non-verbal responses are very important. If students sense you do not want them to touch you, many will interpret it as rejection. Students may say "They act like I'm not clean or something." I do not mean for teachers to seek out students and encourage touching. We need to be careful about this, but be prepared for it and accept it, especially from students of your own sex.

Another means of expressing concern over the growth of the child is through home visitations. Often parents will not attend Parent-Teacher conferences or school meetings. Hostility may be expressed in the home for the values of the school and the teacher. In the home the teacher may effectively dispell those anxieties communicated in the student's environment.

Teachers must communicate feelings of trust and high expectations of the child. They should give the child as much responsibility as possible. Praise work done well and comment little on unsuccessful work. You will get what you expect.

RESPECT FOR THE STUDENT'S FEELINGS

Give the student the benefit of the doubt. Sometimes a student is having a very bad day. When I notice a student getting hostile, I usually try to avoid a direct confrontation. Sometimes I will allow that person to "stew" an entire period. Usually, the next day when I inquire I will find that the student was upset about something that happened prior to class. Many times (if you'll give the opportunity) students will apologize for deviant behavior of the previous day if you allow them "a measure of dignity."

VERBAL COMMUNICATION

If you do not understand what students are saying, ask them to repeat it slowly. If you still do not understand, do not guess; ask them to repeat it again. If it is the student's name, ask that it be spelled out. It usually comes out J-A-M-E-S S-M-I-T-H. If it is a sentence, ask another student to repeat it. One must learn speech patterns, and that can't be learned if the teacher doesn't try.

TEACHING METHODS

As for specific teaching methods--stress vocabulary. Use great variety--the lecture technique or the read-out-of-the-book and answer the questions-at-the-end-of-chapter technique will put you and your students to sleep. They will be quiet, but will not learn much.

Use a tape recorder in small groups, and sometimes allow students to tape answers to questions rather than writing them. Give little homework. You may not get positive results as many homes do not have places for children to do homework, and many parents don't consider it important.

Allow students to write on the board, point on the overhead projector, flip the filmstrip, set up the screens, or read from the filmstrip.

Give students a chance to work with their hands. Write important points on construction paper and cut them up. Allow your students to reassemble them and read them to the class.

During discussions, allow students to doodle on paper. With junior high students, I have even given them newsprint and crayons and let them color about the discussion during the discussion. This brings fantastic results! (Sounds weird, doesn't it?) Do role playing frequently. Many disadvantaged students cannot read or write well but can verbally compete with the best students. Read your tests sometimes, and have students answer as you read. Many will score much higher when they can hear the answer.

Do not give essay or similar type tests. Do not give tricky tests. Tone down your vocabulary to your students' level. Sometimes they miss your whole point because they don't understnad a word you thought everyone knew.

EFFECTIVE DISCIPLINE IN THE CLASSROOM

Discipline is a very difficult word to define as it relates to the classroom because expectations of teachers are different. It is impossible to construct a set of guidelines that would be acceptable in most situations. Opinions about classroom control vary widely. Most classroom rules are based on moral, legal, personal, educational, and safety values of teachers. Misbehavior and disciplinary problems usually occur whenever a student breaks one of the classroom rules that have been determined by the teacher and/or the school authorities.

Discipline is one of the major problems in our education system today. In the national Gallup polls on education the public consistently places school discipline as its primary concern.[1] The principle reason for this concern is our common desire to establish and maintain an environment that will allow each student an opportunity to maximize his human potential in the classroom. I will tell you what is wrong with the public schools in America. To begin:

> The teachers are afraid of the principals;
>
> The principals are afraid of the superintendents;
>
> The superintendents are afraid of the school boards;
>
> The school boards are afraid of the parents;
>
> The parents are afraid of the children and
>
> The children, heaven help us, are not afraid of anyone.[2]

In looking seriously at the concept of discipline, unfortunately, to many educators the word sounds like a code for "punishment," and there is ample evidence that punishment is incompatible with education, at least in any of its more creative and humane aspects. Punishment tends only to extinguish certain behaviors as long as the punisher is physically present or the fear of "getting caught" is great. However, punishment also extinguishes independence, responsibility, and creativity while at the same time engendering hostility and resentment toward the punisher, the school system, and the educative process itself. As Mark Twain said, "The cat who sits on the hot stove won't sit on a hot stove again, but then he probably won't sit on a cold one either." Our prisons and reformatories are overcrowded with recidivists who have been punished time and time again, but to no avail.[3]

ALTERNATIVES TO PUNISHMENT

We have to realize that we need new ways of dealing with and of raising children because the old ways are no longer effective. We need new ways of dealing with children in our schools because we simply can no longer run schools for the children, but we must run our schools with the children. I am not recommending that we actually allow the students to run the schools, as they may be doing now anyway. However, it is the students themselves who decide whether they want to study and to behave. We have some excellent teachers as long as the students want to study and behave themselves. These same teachers are "at a loss" when the student decides he does not want to study and to behave.

Parents and teachers still try to control children with reward and punishment. They think the child does not know better. If you give a child a reward, he does not consider that an expression for which he should be grateful. When you give him a reward, he considers that he is right and he will attempt little else until another reward is coming to him. Let us look at punishment again. It is true that punishment can be effective but only with children who do not need it. The imposing of punishment may have a momentary effect, but the next minute you have to punish again.

We have to learn to treat children with respect. In our society we operate on the principle of mutual respect when interacting with each other as adults, but when dealing with children this principle does not apply. The relationship that I am suggesting is one based on kindness and firmness. When we are kind and polite, we are expressing respect for the child, and when we are firm and straightforward, we are expressing respect for ourselves. It is often difficult to be both kind and firm

when dealing with young people. Many times we are kind but not firm or firm but not kind in our relationships with youngsters.

Very often we as adults confuse the concept of respect with fear. We think that if a child fears us he, therefore, respects us, and we often demand this respect as we become too firm. We fail to realize that respect is an honor that is earned by us through our healthy relationships with youngsters, not by how much power we "wield" in our interactions with them.

The failure to realize this fact has resulted in the teenage rebellious years in our society. Many children are controlled by an authoritative use of power by adults until they reach the stage of adolescence. At this period of development in their lives, youngsters are not dependent on adults for the reward adults have been using for years. Youngsters are no longer dependent on adults for friendship because the childhood peer group has now replaced this need to be accepted. The adolescent is also large enough to physically rebel by fighting or by running away.[4]

Parents have an obligation to be supportive of their children when the child is in need of an adult's compassion and guidance. Even when the child is obviously "wrong," we cannot afford to turn our backs on our offspring when they need us most. We are not condoning a child's behavior just because we support him in time of need. Every child is a human being, and he wants to belong to a family. This is the natural order of all living creatures. When the child is willing to do what is necessary to be accepted by the family, we love him; however, when he misbehaves we put labels on him. We say "he is trifling," "he is a bum"

or a "hoodlum"; all kinds of labels which do not actually explain anything. Parents must seek out the reason for a child's misbehavior. A child may constantly keep you worried, for in his mind he has a place only when you keep worrying about him. He prefers to be scolded or punished rather than being ignored.

Many times we adults strike out at youngsters in a "fit of anger," not realizing the serious damage we may be inflicting upon our relationship with the child. We must realize that this anger is usually a secondary feeling we have which follows some kind of primary feeling in us such as hurt, embarrassment, fear, disappointment, jealousy, or mistreatment. Anger is often the way we try to punish another person for causing this primary feeling.

We as adults must stop and ask ourselves, "Why am I so angry?" "What do I really feel?" And then--why not try to express our primary feeling which may cause the child to feel genuinely remorseful? Many times when we physically or verbally punish a child, he no longer feels sorry for his deviant behavior. It is very difficult for the child to develop a concern for your feelings after you hurt or embarrass him, especially if this is done in front of others. Instead of concern, the child feels resentment toward the adult which perpetuates an unhealthy relationship between the two parties.

MOTIVATION

The relationship we establish with the child determines whether he will be motivated to behave positively or negatively. We need to know how to motivate the child to cooperate, to function, to respect others, and to take on his share of the responsibility. Understanding the child's

motivation is one of the basic requirements for a new approach to children. When our authority alone is used, a concern with motivation was not needed.

Educators need more training in recognizing the child's immediate goals. If teachers do not understand the child's goal, they can become victims of the child's unconscious "scheme" rather than their guides.

THE ART OF ENCOURAGEMENT

Finally, teachers need to learn the art of encouragement. This term is widely and lightly used. Encouragement is more than just praise. Actually, praise can be detrimental if children feel it is undeserved. The art of encouragement presupposes sincere faith in most children as they are, not in their potential or what they could be. Teachers should keep in mind that every child needs encouragement as a plant needs water, but unfortunately only those who do not really need it get it a great deal in our schools today. Most children cannot build on their weaknesses but only on their strengths.

SELF ESTEEM--AN ALTERNATIVE TO SUBSTANCE ABUSE

Yvette P. Bogan

INTRODUCTION

A high school student, sixteen, is sitting in class, her head down on the table. She stirs in her seat at fifteen minute intervals, looks around vacantly, and then lays her head back down on the table.

The bell rings; she jumps from her seat, crosses the room quickly and disappears through the door and in a split second joins the throng of students in the hall changing classes. Within moments, the young student is standing outside one of the school buildings. She has a lit cigarette in her hand, and is laughing and talking with a couple of friends about the good time they had getting high at the party last Saturday night. The young student no longer shows signs of lethargy and boredom which were exhibited in class just moments earlier.

This description fits many persons in our schools today. In the education process, there are many labels placed on students in terms of attitudes, scores on standardized tests, or achievement skills. One of the more popular labels is that of disadvantaged. Often the term is applied to students who exhibit many of the same characteristics as the sixteen year old student described above. Is this student disadvantaged? If so, is she perhaps disadvantaged because she is poor, comes from a broken home, lives in public housing, has poor coping skills, a fourth or fifth grade reading level, little interest in school, no particular

goals--long or short term--mapped out for herself, influenced by the attitudes and lifestyle of her peers?

One might say that this student is disadvantaged by a combination of the factors mentioned. Certainly, a closer analysis of this young lady reveals many of the qualities listed. No one would dispute, however, that the term disadvantaged could be applicable to her.

THE DILEMMA

A large percentage of the students who get labeled disadvantaged comprise a significant percentage of those students who are substance abusers. The frequency of abuse of drugs and alcohol can range from two to three times a week to as much as several times a day. Often the conversation, the clothes, attitudes, and choice of friends of these students exude the interest in the drug scene.

To understand the correlation between the disadvantaged and substance abuse, we must take a closer look at what we mean by disadvantaged and the impact of this term. The term disadvantaged probably has more meaning for the professional using the term than it does for the target of the description. In many instances students are unaware that this label has been placed on them. As we shall see later, awareness of the term is not a prerequisite for the deleterious effect that it has on the life of the individual.

The term disadvantaged in itself connotes inferiority or an unfavorable position. It can be used to describe a state or composite of skills or achievements which are less than standard or below the accepted requirements. A disadvantaged person can be in an inferior position based upon criteria that includes economic, social, cultural, race, abilities, interests, love attachments, or numerous other factors.

The effect of this term, as it applies to a young student, is that the label carries with it a prejudicial quality which induces one to make assumptions regarding the abilities and capabilities of the individual. Usually, the expectations for this individual are very minimal.

ANECDOTE

In several classrooms that I have visited, teachers have taken me aside and explained that these students are disadvantaged and would not be successful either in understanding my drug/alcohol presentation, or in life generally. In one particular class, the students complained that the teacher never spoke to them but just passed out work and quizzes. They were upset that they knew nothing about their teacher, and she in turn knew nothing about them. In talking with these same young people, I found that they showed feelings and were very adamant in expressing their likes and dislikes. One third of the class recounted experiences to me about getting high. They were very expressive, detailing how it felt, the peers and adults involved, and the frequency in which they were involved. Once they established that I would not "bust" them, they were quite comfortable in their speech.

EXPECTATION

Often, the person who uses the term disadvantaged immediately assumes the posture of someone who is working with the handicapped who must immediately, sometimes without adequate assessment, lower their expectations of the young person. This attitude projects onto the young individual, who in turn begins to expect less and less of himself/herself; hence, there is foundation for low self esteem and low achievement. The vicious cycle begins because the opinion of the adult

reinforces his/her lowered expectations. However, through the special olympics and other sports activities, we find that human potential encompassing the human spirit can overcome many, if not all, natural obstacles. It seems that this realization has not been singled out or confronted by many professionals involved with developing cognitive and other mental abilities.

SELF-ESTEEM

In discussing self-esteem further, it is necessary to note that the literature clearly supports that individuals develop feelings of self worth, the backbone of self-esteem, from the significant adults present in the early years of their lives. In many cases, youngsters labeled disadvantaged are confronted with adults who themselves have little feeling of self worth, and who say over and over again in verbal interactions, physical actions, and reflective attitudes that you as my seed or you as the neighborhood kid will be nobody because I am nobody. When young children go to school and realize that there are no different expectations for them, then the results are predictable. The pains that began at home are now extended to the classroom. The need for young persons to find ways to diminish their hurts and pains grows in importance.

CLASSIC SYMPTOMS

Classic symptoms used to hide the pain might be acting tough and rebellious or becoming withdrawn, particularly with adults. By the third grade, the selected survival mechanism has become well entrenched. The significant adults encountered react to the behavior instead of the underlying cause and the student becomes disruptive. We now have the

We now have the precursors for prime drug taking or other forms of deviant/delinquent behaviors. Fritz Redl in Disadvantaged--What Else? discusses how the focus by professionals on the shortcomings of the young person labeled disadvantaged often blocks our view to the advantages or virtues these youngsters do possess, which in many instances, could provide a basis for bridging the gap to those skills that they lack. This would be the first step in wiping out the disadvantages. Certainly self worth would be improved, which would enhance self esteem/ rapport with adults and allow for expansion of skill developments.

ANALOGY

In an episode of WKRP - Cincinnati, Venus the Black D.J. explains an elusive concept in chemistry to a sixteen year old potential drop out. The student has seemingly flunked this subject several times before because he is unable to understand the structure of the atom. Venus takes two minutes to complete the awesome task of explaining this phenomenon so that the student will not only understand, but will live up to a contract to return to school if Venus is successful. Instead of the usual terminology, atom, proton, neutron, nucleus and electron, Venus uses a frame of reference and terms that the young man understands. Venus correlates the properties of the atom to the properties of neighborhood gangs. Although simplistic as television often is, this episode points out the fact that when one assumes that the student can learn and tools are employed that work, then an unteachable becomes teachable. Unfortunately, too many educators and educational institutions have failed to make the necessary commitment to bring out the potential of these young people. They prefer to employ workable methods with all

young people rather than methods that work. It becomes easier and less risky to write the young person off, label him or her disadvantaged, and blame someone else for this human waste--the home, society, etc. The fault may be with the individual's home, neighborhood environment, society, or the individual himself, but it must also be shared by the educator and educational institutions.

DOCUMENTARY

In a study done in Charlotte, North Carolina after analyzing the report data in the schools, it was determined that drug taking behavior increased where students had poor relations with parents and teachers. It would seem that these findings would accentuate the need for those adults in the roles associated with developing the cognitive and mental abilities--parents, teachers, and other professionals--to improve their skills, look at varying methods, and most importantly assess attitudes with the goal of making needed changes for increasing the success potential of their young charges.

Many of the young people have never been told that they (1) can succeed, (2) have ability, (3) can set achievable goals, or (4) be accepted. However, these young people group themselves and reinforce each other, often negatively. In this way they are able to fill the void and lessen the pain they feel. Taking certain drugs, depressants like alcohol and barbituates, serve as a survival mechanism and deadens the pain. In other cases, drugs like marijuana block out reality and enable the young person to escape negative reactions they experience with adults, other young people, and professionals. They insulate themselves with a subculture that they define as "OK" and which allows them to feel

"OK" and be accepted by the group. Once this layer of protective covering is allowed to fully envelop individuals it would take more than surgery to remove this "growth" and prevent it from returning. The young people have a substance abuse problem.

THE COMMITMENT

How do we break this vicious cycle? Professionals and parents who work with special populations including the disadvantaged, must commit themselves to acknowledging and accepting the differences in each individual student, validating the advantages and virtues that are present even when they must be actively sought. Establishment of rapport within the student by paying sincere compliments to the student when the occasion presents itself and then committing oneself to helping each individual to setting an achievable goal to guarantee success are invaluable. There will be resistance initially because nobody likes to see rejection in somebody else's eyes and this has been the history. Years of defenses have been in operation too long to realistically assume that the response will be automatically different, even with sincerity and demonstrated interest. However, constancy and consistency will increase the likelihood of positive results.

Working with the "disadvantaged" necessitates special qualities in the helping professional parallel to working with the physically handicapped. There is a need of different assumptions if we are to be successful. A person has to really want to work with this population as opposed to being placed there because they do not have enough tenure or are in disfavor with the school administration. Other qualities needed are sincerity, the ability to love easily, self knowledge/understanding/

acceptance and the ability to work with varieties of people and backgrounds. Finally, we must have the skills which include risk taking, the desire to experiment until we find a method that works and creatively utilizes space provisions.

Adults can not hope to influence defensive young persons by isolating them and pointing up those things that are wrong with their peer group. Instead, adults must become support persons to provide alternatives to the peer group and to drugs. We have to accept young persons and guide them to other things that provide enjoyment, thus offsetting the need to get high.

SERVING HANDICAPPED STUDENTS WHO ARE DISADVANTAGED: A SENSITIZED EXPERIENCE

Arlington W. Chisman

Most public school systems are moving towards serving handicapped students, who may be disadvantaged, in regular classroom settings. Whereas in public schools several years ago, there were supervised programs for handicapped students in self contained classrooms with trained teachers who had degrees in working with the handicapped; today, all teachers are expected to work with these students.

Some personal observations lead me to pose some serious questions. First the Observation: That 90% of the teachers I interviewed for a teaching position for handicapped students who had degrees in special education, either had relatives who were handicapped or were close to someone who was handicapped.

This fact raised three interesting questions:

1. Did early association with handicapped persons develop empathy among these teachers for working with this group?
2. How will teachers who have not had exposure to handicapped students respond when they are placed in their classroom?
3. What strategies may be employed to assist teachers in working with disadvantaged handicapped students?

Hopefully, through this workshop we will be able to sensitize you to some handicapping conditions, thus providing insights that will better enable you to provide a rewarding academic program for mainstreamed special needs students.

Since you have had some experience with educational modules, our first learning experience is one which deals with a module (Learning Experience I, see p. vi). The purpose of this module is to give you background information to better understand our population (allow time to complete).

Now that you have some background on handicapping conditions, we are going through a simulation of learning disabilities. If you completed your learning module, you noticed that learning disabilities might include disorders in listening, thinking, talking, reading, writing, spelling, or simple computing. Our second learning exercise relates to learning disabilities and will address reading for comprehension in order to better understand the type of problems with which this child has to cope.

Learning Experience II is distributed to the class, and they are instructed to make it readable (see p. viii). After the exercise, the class discussed the activity and this type student.

LEARNING EXPERIENCE III
ORTHOPEDICALLY HANDICAPPED SIMULATION

Each participant is provided two heavy mittens and asked to thread a needle and sew on a button. This simulation focuses on muscular, skeletal or neuro-muscular impairment. Class discussion follows this activity.

LEARNING EXPERIENCE IV
VISUALLY IMPAIRED

All of the participants will be blindfolded and provided an envelope of screws and nuts. While blindfolded, they are required to attach the screws and nuts as appropriate. Class discussion follows this activity.

LEARNING EXPERIENCE I

ENABLING OBJECTIVE

Determine the need for Technology Programs that serve handicapped student populations (i.e., characteristics of the population--social, psychological, legal considerations; etc.).

READ Read the "Information Sheet", p.

FEEDBACK Demonstrate knowledge of the need for Technology Programs for handicapped students based upon the characteristics of the population--social, psychological, legal considerations; etc., by completing the "Self-Check", p.

Evaluate your competency by comparing your completed "Self-Check" with the "Model Answers". p.

FROM: Chisman, A.W., et. al. "Planning Vocational Education Programs for the Disadvantaged and Handicapped." Competency-Based Administrator. Education Project, Division of Vocational and Technical Education, Virginia Polytechnic Institute and State University, Blackburg, VA. 76 pp. ERIC 1978.

INFORMATION SHEET
SERVING HANDICAPPED STUDENT POPULATIONS

Just as need assessments and community surveys are conducted to establish instructional priorities for disadvantaged students, the same steps should be taken in the initial planning stage of designing technology programs for handicapped learners. Prior to need assessments, careful consideration should be given to the development of criteria for identifying handicapped students. This information sheet includes identification criterial for handicapped students and a discussion of some social, psychological, and legal considerations necessary in determining the need for technology programs that serve handicapped student populations.

Criteria for Identification of Handicapped Students

The Federal Register (1970) defines "handicapped persons" as persons who are:

> mentally retarded, hard-of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired persons who by reason of their handicapped condition cannot succeed in a vocational education program designed for persons without such handicaps, and who for that reason require special educational assistance or a modified vocational education program.

Handicapped vocational education students must be identified and documentation maintained in the school files. In order for a student to be identified as handicapped he or she must meet one or more of the following conditions:

a. Trainable Mentally Retarded: Rate of intellectual development approximately 25 to 50 percent of normal.

b. Educable Mentally Retarded: Rate of intellectual development is approximately 45 to 75 percent of normal.

c. Hard of Hearing: Individual can hear and understand speech, but with difficulty.

d. Deaf: Even with amplication of sound provided with hearing aid, the individual is unable to hear and recognize all speech sounds.

e. Speech Impaired: These individuals have speech patterns that differ from the normal to an extent which is noticeable.

f. Visually Impaired: These individuals are severely limited in their ability to see.

g. Emotionally Disturbed: Individuals with this handicap suffer from psychiatric disturbances which limit their ability to govern their own behavior.

h. Orthopedically Handicapped (Crippled): These individuals have limited ability in self-mobility, sitting in a classroom, and/or using materials or equipment for learning because of muscular, skeletal, or neuro-muscular impairment.

i. Learning Disability: Individuals with this handicap exhibit a disorder in one or more basic psychological processes involved in understanding or using spoken or written language. These processes may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or simple computing.

j. Other Health Impaired: This group of individuals has limited strength, vitality, and alertness because of chronic health problems such as heart conditions, tuberculosis, rheumatic fever, nephritis, infectious mononucleosis, asthma, hemophilia, epilepsy, leukemia, diabetes, and other illnesses.

The Use of Psychological Services

The Merrill Area Public Schools Faculty Handbook for Psychological Services (1976) states that a great majority of children are referred to school psychologists because of learning problems such as:

1. A child having normal or above average intelligence but who presents general or specific learning problems.

2. A child who does not make gains after special remedial reading instruction.

3. A child with speech difficulties who does not respond to therapy.

4. A child who formerly did well but who now does barely acceptable work and whose attitudes and behaviors have changed for the worse.

5. A child who is deliberately aggravating to his teacher and classmates, either demanding excessive attention or being overly-dependent.

6. A child who seldom gets his work done in group situations.

7. A child who is a mirror writer, or who turns his books upside down or in unusuall positions when reading or writing.

8. A child whose parents are requesting his early admittance to school.

9. A child whose group intelligence test data seems invalid or contrary to teacher expectations.

10. A child who is tardy frequently or who misses much school for minor illnesses.

11. A child whose nail chewing, stuttering, temper tantrums, or crying spells appear to be related to a frustrated desire for perfection.

12. A child who seems chronically unhappy even though docile.

In order to alleviate some of the learning problems of handicapped students, the Merrill Area Public School's Handbook stated that the school psychologist is prepared to:

1. Assist school personnel in understanding the child's educational and personality disabilities through the use of psychological tests and assessments.

2. Interpret the findings of psychological studies and suggest plans for the effective instruction and management of the child.

3. Study the incidence of school children with psychological problems and suggest ways in which the school program may be modified in accordance with such findings.

4. Consult with school administrators and interpret findings from the fields of psychology and learning theory that may assist in development of curriculum plans and educational policies.

5. Initiate and conduct research as well as designing research which has implications for the school program.

6. Serve as the liaison person between the school and community agencies and personnel interested in psychological matters and utilizing school psychologist findings in their work with children.

According to Elaine Trudeau's Legal Provision for Delivery of Educational Services on a Cooperative Basis to Handicapped Children (1973, p. 1-2), "the State-Federal Information Clearinghous for Exceptional Children, after analyzing laws and regulatory material relating to the delivery of special education services on a regional basis, has isolated several organizational patterns which are used individually and/or simultaneously."

The first pattern is tuition contracting. School districts have quasi-corporate powers which include the ability to enter into contracts. A small school district may be able to provide a program for children with low incidence handicapping conditions, such as visual impairment, and may contract with a neighboring school district or agency for this special program. Through a contract, two or more small districts may continue efforts, usually selecting one district to establish and operate the program.

Secondly, the regional approach extends a step beyond tuition contracting. New York's Board of Cooperative Educational Services (BOCES) is an example of this approach. In addition to contractual authority, governing bodies of school districts in New York may contract with BOCES units. BOCES units, in addition to providing special education service, may also provide other services such as teachers of art, music, physical education, vocational education data processing, and vocational programming.

There exists a wide differential among states regarding the legal base granted to local education agencies to conduct programs using any of education's approaches. Approximately 20% of the states have minimal guidelines. In Alabama, Mississippi, New Mexico, and Rhode Island the law merely states that districts which cannot support their own programs may join together to provide services for the handicapped. How districts are to do this, the powers they have upon joining, and other administrative matters are not delineated in the law or regulations. Other states such as Louisiana and

West Virginia grant to their local education agencies the authority to purchase special educational services from other districts. One state, Nevada, assumes the districts will not want to join together because of geographic and population differentials, but state law and regulations do not prohibit these unions.

Conversely, many states have detailed laws and regulations. States such as California, Indiana, Minnesota, Missouri, Wisconsin, and New Jersey spell out policy in many areas, including administration responsibility and the types of services and programs to be offered. In some states such as Minnesota, a special intermediate school district may be formed only after a referendum in the concerned districts. Tennessee's school districts may perform all or part of its special education functions by participation in a special services association. This association is established by a resolution of each of the governing bodies of the participating districts. This association then makes policy and provides services for the entire geographic area covered by the participating school districts.

Trudeau (1973) states further that a third form of regionalization is the regional education service center as found in Texas. Provision is made for instructional materials, distribution, consulative assistance, in-service training, and other special service needs of local school districts.

In many states, the county is used as the regional base for establishing cooperative service programs. Wisconsin, for example, provides for the establishment of handicapped children's education boards on a county level.

The fourth form of regionalization is the voluntary association of school districts to deliver special services. This arrangement, commonly called the cooperative, either directly or through its constitutent districts develops policies guiding the delivery of services, selction of personnel, and financing. In this manner, school districts voluntarily join to form an agency they collectively regulate. Cooperatives are organized to make special services available as a result of the desire of member school districts.

The special district is another alternative. While limitation of functions may be specified, it operates with the same powers and responsibilities as any school district. The special district differs in that its special purpose is to focus upon the delivery of a specific education service. The district is a legally constituted unit responsible for its own policies, financing, and budgeting. It is subject only to legal limitations and the responsiveness of its patrons.

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PERFORMANCED BASED
INDIVIDUALIZED INSTRUCTION TO MOTIVATE
SPECIAL NEEDS STUDENTS

Robert B. Pyle

One of the major tasks of teachers at all levels of instruction is motivating students within their learning environment. This challenge is overburdening when classes are composed of accelerated and handicapped students. There are several instructional techniques which can be utilized to help the teacher resolve this problem, but one technique is especially appropriate. In many classroom settings, performance based individualized instruction can be developed to meet the multifaceted needs of the learner, learning environment and teacher.

The first step in establishing a performanced based individualized instructional program is for the teacher to become aware of both his and the student's commitment. The teacher and the student both have responsibilities.

The teacher or director of learning activities responsibilities include:

1. Informing the student of his responsibilities.
2. Providing constant direction and backup.
3. Motivating the student through a constant cooperative effort in learning.
4. Providing related information and learning resources.

5. Reviewing and overseeing safety checks and student safety habits.
6. Assisting student in designing and reaching mutually agreed upon performance objectives.
7. Constantly assisting the student in overcoming obstacles which are encountered in the learning environment.

The students' responsibilities include:

1. Determining what is to be learned and what area is to be studied.
2. Developing an individualized learning contract which is signed by student and teacher.
3. Preparing a time line describing what is to be done and when it is to be accomplished.
4. Learning to work as an individual with minimum supervision.
5. Working cooperatively with the teacher in making learning decisions and changing contract and time lines when appropriate.

The next question is when does one institute a performanced-based individualized instructional program? This question can best be answered by suggesting that this instructional strategy may be one of the techniques employed or the only instructional approach used by the director of learning activities. This innovative approach has many forms and variations of individualized instruction; one approach that has been successfully implemented in many educational program areas is a performanced-based individualized instructional system. PBI has been implemented in grades K - Adult in the areas of mathematics, science, industrial education and others.

IMPLEMENTATION

Students enrolled in PBI courses receive instruction on an individualized basis that will provide them with basic skills necessary for completion of various required competencies in a subject area. A student entering one of the courses selects an instructional area that he or she is most interested in initially pursuing. Upon selection of the instructional area within a subject or course, the beginning student is given an opportunity to select from a series of prerequisite objectives while the advanced student may select those objectives that he/she wishes to attain during a given period of time. The student's choice is recorded on a learning agreement form which is a contract between the student and teacher specifying the objectives to be completed during a given period of time.

After selecting the performance objective, the student undergoes a diagnostic pre-check procedure designed to identify prior knowledge and experience with respect to one of the terminal objectives. This is accomplished by using various techniques and devices including multiple-choice instruments, interviews, and performance tests. (See Figure 1) The results of the diagnostic procedure are used to prescribe the appropriate sub-objectives for the student as he begins the learning sequence leading to the attainment of the terminal objective.

In order to attain a terminal objective, the student utilizes a series of self-instructional materials called modules. A student initially uses the PBI module which corresponds to the sub-objective prescribed. The PBI system consists of modules which contain instructional packages; instructional packages consist of an objective,

learning resources, activities and post checks. After reading the objective, a student selects from a variety of learning materials, ranging from a textbook to a sound closed loop film, or the resource that is considered to be most appropriate for his/her learning style. After selecting the appropriate learning resource the student utilizes it individually or with peers in one of several portable learning carrels located in the classroom.

The student moves to the learning activity section of the package after using one or more of the learning resources. The activity section directs the student to apply the knowledge recently gained from the learning resources or to practice a skill as specified in the objective. If the criterion performance is accomplished successfully, the student will advance to successive PBI instructional packages until the terminal objective of the module has been achieved. If the student does not attain the criterion performance for a PBI package, he is directed to a remedial procedure as prescribed by the teacher.

When a student completes the last instructional package in a PBI series, he/she is evaluated on the basis of the criterion as stated in the terminal objective. A student who successfully completes a terminal objective is certified by the teacher who documents this accomplishment by placing a signature beside the objective listed on the contract sheet of program objectives. This information supplements the usual course grade and may be used as credentials by a student seeking employment or entering a related post-secondary school program.

ORGANIZATION

Students using the PBI system will receive instruction leading to completion of competencies on an individual or small group basis. After

each instructional module is completed the students are given the option of moving from one learning area to another or changing to a different instructional area or subject. Students enrolled in the same course may complete two or three modules or complete 20 to 30 modules depending upon skill and ability. Some students will be ready to obtain in-depth preparation in a particular subject area after 10 to 12 weeks, and others will spend an entire year in one course completing only a small number of modules. This may be accomplished by selecting one of three different approaches. The first option involves in-depth preparation through the use of an individually prescribed plan of instruction for the student utilizing modules of PBI and the physical facilities in the high school. A second approach allows the student to enroll in a cooperative education program which provides related training in a selected educational area. The third, called the senior plan, lets the student enroll in a nearby post-secondary institution (technical institute, college or university) for full-time classroom and laboratory preparation in a specific educational area.

DEVELOPMENT

The modules, utilized by students in various educational programs, are developed through the application of an instructional systems approach as shown in Figure 2. The initial activity required the preparation of task statements for each subject area within a curriculum area. Each completed task statement list was submitted to a subject area advisory committee composed of teachers, curriculum specialists and other persons who were experts in the subject area. These advisory committees reviewed the task lists and identified those task students should attain in a given subject during a specified period of time.

Upon completion of the task identification phase, members of the advisory committee review the job entry tasks with subject area teachers, local school administrators, state supervisors, and/or university faculty. Each advisory committee provides continuous support to the subject teachers by providing information and advice pertaining to priorities for module development, available learning resources, and suggested learning activities.

The next procedure in the process of developing the individualized instructional system is the specification of terminal objectives in performance terms. Each entry task is written as a terminal instructional objective.

After carefully specifying the terminal objectives in behavioral terms, a learning sequence is established for each objective. The learning sequence outlines the steps through which a learner will progress in attaining the terminal objective. Each step or sub-objective in the learning sequence is also written in behavioral terms.

Upon completion of the learning sequence, a number of learning resources are identified and/or developed for each sub-objective. Many of the resources are commercially available while other materials require development in order to be compatible with the sub-objective. As a result, a variety of learning resources are identified or developed in order to provide students with a range of instructional modes for attainment of each sub-objective.

SUMMARY

The most important element in a Performanced Based Individualized Instructional delivery system is the teacher. Once the student is

involved in the system, it is extremely important that the teacher let the student know how to proceed with the modules and how pleased he is with the student's progress. A critical factor in this process is keeping track of the student's progress, discussing problems, and helping the student continue his work in the instruction subject area he has selected.

After the student has studied the module and the teacher has explained the function of each part of the module, be sure to define time lines and his expected progress. From that point on, the teacher becomes a director of the learning activities of that student and all other students in his charge. In addition, the teacher and student work together deciding what is to be done and how the performance objectives are to be undertaken. The teacher must make sure the student's independent studies are related as closely as possible to the course's behavioral objectives. This is absolutely important to a successful PBI instructional system within any given instructional program. Once a teacher starts the PBI process his contact with students will become more meaningful, one to one; his problems with meeting the needs of special students will disappear and his ability to motivate students will be strengthened.

MOTIVATING THE DISADVANTAGED YOUTH

Frederick G. Welch

INTRODUCTION

The highly motivated and enthusiastic teacher tends to have that enthusiasm rub off on students. Unfortunately, when students are "turned off" perhaps it is because the teacher has been "turned off" to teaching. The teacher who cares little about the students tends to show it, and this is often reflected in the students' performance. The unmotivated teacher could be this way because of many problems, such as too large a class, poor facilities and equipment, low rewards for their efforts, poor administrators or just plain burned out. If the students are to be turned on, then the teacher must be turned on as well. Thus, this thesis is as old as time--the teacher makes the difference.

If the teacher is in a routine utilizing the same teaching techniques day in and day out, year in and year out, the students, as well as the teacher, can become bored. Thus, varying the teaching techniques and strategies will help both the presenter and the learner. Developing and utilizing new strategies will help remotivate the teacher, and the motivated teacher will keep trying new methods and approaches until the students are "turned on." The following are a few ideas for the motivated teacher to utilize in rekindling the flame within the students.

BEHAVIOR MODIFICATION

Much has been written about behavior modification, so only enough time will be spent on this to provide ideas for implementation. This

concept deals with rewards for good work rather than punishment for poor work. Depending upon the age of the student, the reward may range from a school party or a trip to McDonald's for a Big Mac, or a visit to a major industry. One must spell out what is expected for students in order to obtain these rewards, such as handing your work in on time, getting the shop or classroom cleaned up before the end of class, doing a number of job or operation sheets, getting a certain number of spelling words correct. Whatever it is you are attempting to achieve should be spelled out. Generally speaking, the younger the students, the quicker the rewards should be given, also smaller rewards with less time between desired action and the reward. As students get older, rewards can be for longer periods of time.

COMPETITION

Competition has made this country what it is. Most people like to be competitive. This includes students of all ages; we all want to play the game to win, no matter if it is cards, football, or life. Team competition tends to have a more positive effect than individual competition. Therefore, when setting up competitive events, your class should be in competition with a similar class, such as the class across the hall or the morning class versus the afternoon class, or rival schools. An example of this might be very simple in the classroom setting, that is the number of correct spelling words per week; the two third-grade classes could compete with each other and the poorer the student spells, the more he would attempt to improve to help the team. You will discover the better spellers will be helping the poorer spellers to improve. Everyone will attempt to improve--peer pressure will guarantee this assertion. This concept must be based upon friendly competition and good

sportsmanship. This concept can be built into the Vocational Industrial Clubs of America's program within the school. Classes compete with each other in order to have the most winners or the most people represented at the state and national levels. This process helped develop team spirit as well as enlisting every person and trying to improve.

In competitive events, all should work to win, not just the best in the class. As an example, in vocational education skill olympics, two programs could match or pair students so that all compete best against best, and those of lesser ability against their equals. This is like a track meet where all participate and earn points toward a total score. This method will tend to upgrade all levels of students and each has an opportunity to contribute equally to the total event.

HANDICAPPING

Have you ever played golf or bowled with a professional? If so, you have probably realized how bad you were and how impossible it was for you to match that person's score. It would have been very easy for you to be discouraged and give up trying to beat this person. This might be the attitude of many students, thus affecting their performance in the classroom. They attempt to match or beat the top student in the class knowing very well they never have the opportunity to be an A student. An example of this would be the student who consistently gets eight out of ten questions correct on an examination. All this student would need to do is to improve on one or two questions and get an A; the person who consistently gets three out of ten correct on an examination can even obtain 100 percent improvement or six out of ten correct, and still end up a failure even though they have improved far more than most. It

would be easy to develop a "why try" attitude here. Using the handicapping process used so effectively in golf, where each student has their own score to beat, if they improve then of course their grades improve. This will help a person try to improve each week and as time goes on, so does their handicap improve. It becomes more difficult to obtain and meet the same grades, thus there is a constant striving to improve.

RESOURCE PERSON

Do yourself and your students a favor by inviting a local resource person, business or civic leader to your shop or classroom to present a talk on their specialty. This local resource person will bring relevancy into the classroom. The students will be getting "word from the expert downtown." Even if the resource person says the same thing you may have stated, it must be more believable by the students because it is coming from a person other than the teacher. By utilizing the right resource person, you will find the topic to be of high interest to this person, and their enthusiasm and commitment will come through in the class. The resource person will enjoy bringing his or her expertise into your classroom, thus instantly improving the community and school relationship. The topics to be covered by the resource person can cover such areas as banking, saving, borrowing money, employment opportunities, attitudes for success, insurances, taxes, occupational skill techniques, new technical processes that are being utilized in the community, etc. One only needs to look at what must be taught and most likely will find a local resource person eager to assist in providing information in this area. When seeking a resource person, always ask for the top individual in the company. As an example, if you went to a bank and wanted someone to talk

about borrowing money or the cost of borrowing money, start with the bank president or manager. If they cannot help you, they will assign someone else in the bank to do so. Not only will the resource person be doing you a favor, but they will be doing their boss a favor as well. The number of resource people available are only limited by the size of the community and the imagination of the teacher. Following the resource person's presentation, a follow-up thank you letter should be sent to the individual as well as the company, and a copy to the individual's supervisor; thus the person would be very willing to assist you again.

ROLE-PLAYING

Role-playing is not a new concept, but it is certainly under-utilized. The job interview is a natural for role-playing activities, but this is not the only area where role-playing can be effected. Almost any problem that arises in a classroom or shop can be handled through a role-playing activity. The teacher can utilize what is known as "stop action" when the role players tend to bog down. This is done by stopping the role-playing and asking each student in the audience to give a reaction to what the role-player should be saying at this time and how the person should be reacting to the other participant. This gets everyone involved and after several suggestions are made, resume the role-playing having the participants utilize the material presented to them by the class. Following the role-playing activity, the teacher should summarize and bring out important points. Role-playing does not have to be threatening; if it is done in a proper way, all students would like to participate, for it gives them an opportunity to play a

part without having to be definitely committed to that point of view. There is a little "ham" in all of us.

DISCUSSION PERIOD

This is not a free period or a "free for all" where everybody jabbers at the same time. This is an organized activity in which students are encouraged to discuss a topic considered important to the class and to arrive at a solution or an answer to the discussion. Quite often it can be developed as a debate where one-half of the class takes one point of view while the other half assumes the other. This is usually done by dividing the class by some process other than having them decide which side of the topic they would like to assume. The teacher directs the discussion so that only one person is speaking at a time. An example of this discussion period might be the importance of being on time for work. One-half of the students take the attitude that it is not really important while the remaining students take the opposite attitude. The learning will take place during the discussion and a lot of commitments will be made during this discussion period by each student. The summary by the teacher is most important and should bring together the types of information that were discussed. The clever teacher will utilize the discussion to bring out important points, particularly when summarizing the topic.

There are many more techniques that could be addressed to help motivate the disadvantaged learner, but as stated at the beginning of this paper, the results rest solely with the teacher. There is no substitute for good teachers who make the subject at hand interesting and relevant. As teachers, we need to help disadvantaged youngsters become "turned on"

to education to assist them in reaching their goals in life, not only because we are paid to do so, but because we owe it to that teacher, who way back when, "turned us on" and helped us achieve our goals.

CONTEMPORARY LEGAL ISSUES AND HOW THEY IMPACT UPON THE EDUCATOR

David G. Carter, Sr.

INTRODUCTION

It is probable that nowadays when there is an encounter between school administrators and judges, both feel somewhat disturbed. It is the changing relationship between the courts and the schools which concerns the average educator. The officials of the courts are uneasy for another reason. Schools play a very important role in the continued maintenance of society.

Court decisions over the past twenty-five years show that the courts have consistently rendered decisions which raised questions regarding the responsibilities and rights of teachers, students and administrators. Since many of these court decisions concern how administrators related to students, educators find themselves in an environment fraught with emotions and misunderstanding.

The focus of today's presentation will be limited to the extent to which PL 94-142, educational malpractice, competency testing, negligence, due process, and personal and professional liability should be of concern to the vocational educator. It is important to mention that although you are concerned with a variety of legal issues, the area of negligence is especially important for those working in such a high risk area as Vocational-Technical Schools. As educators provide for the instruction,

supervision and safety of students, an understanding of legal aspects of education becomes extremely important.

Educational Malpractice

Historically, school litigation involving educators has centered on issues related to the care, safety and supervision of students. Educational malpractice, on the other hand, addresses actual instruction. Educators generally agree that proper instruction is their most important duty. By proper instruction, I mean that educators are understood to be responsible for instructing students in a manner that results in the acquisition and mastery of particular skills. This point should have particular meaning to educators.

The number of educational malpractice claims has increased during recent years, and many factors help explain this phenomenon: declining test scores; a loss of public confidence in the education profession and discontent over the judgments made by educators. Many of the "lawsuits filed address the responsibility of a school system to provide equal educational opportunity and to ensure that the rights of students are not violated in the process."[1] This increase in the number of lawsuits has also lead to increases in the cost of educational malpractice liability insurance.

As a result of this growing phenomenon, administrators, researchers, scholars and lawyers have started to seek an understanding of educational malpractice and the implications it has for those in the educational profession.

"The education malpractice suits are based mainly on common law."[2] (Such suits allege that school districts and officials are liable) for "damages if they fail to provide students with a proper education;"[3] thus not fulfilling their statutory duty.[4]

The area of law that deals with substandard professional performance "is one branch of the law of torts."[5] With the rise of allegations concerning educational fraud, more attention has been given to "traditional torts precepts, especially negligence law and the notion of the 'reasonable man,' as the dominant theory of liability."[6] Such suits are actions at law in which an individual seeks a remedy for an injury (the loss of educational benefits) caused by the educator or school district. In educational malpractice suits three interested parties are generally involved:

1. The aggrieved student seeking redress for his alleged loss of education;
2. The school system or educator whose competence or judgment is being challenged; or
3. The general public.[7]

Therefore, educational malpractice . . . is a fault-based system.[8]

Before someone can be held liable for educational malpractice, the plaintiff must establish that the educator owed him a duty. "Duty" consists of two parts: the duty to perform in an acceptable professional manner. Two legal theories support the existence of a teacher-client relationship. The first is contract theory, based on the situation in which an individual promises to provide specific services for a given fee, which gives rise to a contractual agreement. Admittedly, such a relationship is more apparent at the collegiate level that the elementary and secondary school; but this is not to say that no duty is owed at the elementary and secondary levels, only that it is more difficult to prove the existence of a contractual agreement at these levels. The other theory may provide a clearer understanding of the basis for creating a teacher-client relationship. This theory states that "liability may

result for substandard care where one undertakes to render services which he should recognize are necessary to protect the safety of another, and his failure to exercise due care increases the other's risk of harm or the harm is suffered because the other relied upon the undertaking.[9] Professional malpractice law, weighing variations of these two theories, has already become a discrete specialized legal field.

Although we have reason to recognize that a sort of contractual relationship does exist between educators and students in certain instances, a plaintiff always has the obligation to establish that a defendent-educator's professional competence or judgment was below an acceptable level. This level, or "standard of care," is that established by peers in the educational profession -- the yardstick being what an "average" colleague would have done in the same or similar circumstances. To establish that an individual has been negligent, there is a need to establish:

1. that the educator owed a duty to the student;
2. that an appropriate standard of care had been breached;
3. the existence of a compensable injury; and
4. that there was a connection between violation of the standard of care and the resultant injury.[10]

Generally speaking, the burden of proof -- of establishing the existence of these four criteria -- rests with the party seeking relief, the plaintiff. "It is the standard of care that most animates in any malpractice claim based on negligence."[11]

Despite education's unique professional circumstances, however, we can expect more and more lawsuits questioning the extent to which members of the profession have performed below some expected standard of care. This litigation should produce more prudent educational decision-making.

And this caution may create other problems for those who are most reluctant to make decisions for fear of becoming embroiled in a lawsuit.

What relief can be sought by someone discontent with an educator's judgment or with the failure of a student to benefit from competent instruction? Three different kings of reliefy already exist for those discontent with the standard of educational care provided by a school district or its personnel: A plaintiff might seek (1) the removal of an incompetent teacher (and replacement with a competent teacher); (2) the provision of, or payment for, remedial instruction; and (3) monetary compensation for diminished future income.[12]

Intentional misrepresentation may provide another area through which a plaintiff can seek remedy. Assume a student receives good to excellent grades in a subject area he or she knows little if anything about. Furthermore, assume that the teacher is aware that all available data indicates the student's liability to perform successfully in that particular discipline. Assume that the parents try to determine whether their child is functioning up to his or her potential and the teacher reassures them that no further assistance is necessary.

The aforementioned example could well constitue the element required for a tort action in decit. These elements include:

1. A false representation made by the defendant;
2. The knowledge or belief on the part of the defendant that the representation is false or, what is regarded as equivalent, that he has not a sufficient basis of information to make a decision;
3. An intention to induce the plaintiff to act or to refrain from action in reliance upon the misrepresentation;
4. A justifiable reliance upon the representation on the part of the plaintiff, in taking action or refraining from it; and
5. Damage to the plaintiff resulting from such reliance.[13]

A school district may also be liable for the negligent acts and omissions of its employees under the doctrine of respondeat superior.[14] "The doctrine of respondeat superior may be invoked to render the school district liable for the negligence of its officials in hiring an incompetent teacher"[15] or, presumably, for an action by an educator that results in a student's loss educationally.[16]

Professional Negligence:
Implications for Vocational Educators

Except for the ruling in Hoffman, the courts have consistenly dismissed claims against educational organizations, their agents, and employees. But there is reason to believe that society and the judicial system are ready for a change. The arguments presented by the courts in the Peter W. and Donohue cases that "physical, neurological, emotional, cultural and environmental factors beyond the defendant's control may have had more influence on the plantiff's learning than the instructional program, may be less acceptable to the courts."[17] This possibility becomes more real as the court moves from reliance on the hypothetical concept of a reasonable man to a "test for a professional (which is) whether he exercised the reasonable care and the measure of skill and knowledge ordinarily possessed and exercised by members in good standing of his profession . . ."[18] I agree that no empirical evidence dictates the most effective teaching methods and technique in any individual case for any particular learner. Likewise, there is no way to determine when the judicial system and educators themselves will finally accept the fact that a professional educational standard of care must be maintained. I do not agree with those who say that such a standard will inevitably produce a flood of litigation. Nor am I convinced that the threat of educational malpractice will deter incompetents from entering the education profession. But, it may encourage educators to utilize those techniques and strategies commensurate with sound educational practice. Meanwhile, educators must take steps to change the perception that "the science of pedagogy itself is fraught with different and conflicting theories of

how or what . . . should be taught."[19] Although the New York Court asserted that there was no way within the meaning of tort law to measure the extent to which student injury was due to external factors as opposed to the failure of school personnel to carry out their duty,[20] that "way" may soon be found. This fact suggests a need for more studies on the effects of schooling.

In short, we must devote attention to what we must do to move education to professional status in the eyes of the law.

Competency Testing

School districts are increasingly obliged to implement minimum competency or proficiency testing programs as a way of assessing a student's mastery of basic skills. More recently vocational educators have started considering implementation of instructional programs based on competencies.

This goal of setting minimal expectations for students may be laudatory, whether or not it takes the form of competency testing. But minimum competency testing is not without potential legal problems.

Critics of MCT have begun to challenge specific features of such existing minimum competency programs as the fairness of testing procedures vis-a-vis instruction; the biases for or against certain racial, ethnic and special-needs populations; failure to provide necessary remedial services; and a lack of sufficient time to implement procedures.[21]

These challenges concern imminent or actual injury to students. All the cases so far make one point clear: If lawsuits are to be avoided, or challenges to MCT are to be withstood successfully, state departments of education, legislators, and school district officials must take steps not to violate the rights of students.

To date, the litigation concerning MCT filed on behalf of plaintiffs has either questioned (a) its constitutionality; (b) "certain procedural steps in the process,"[22] or (c) whether an administrative unit exceeded its authority. Although litigation centering directly on MCT is not yet abundant, existing or prospective challenges focus or will focus on (1) "a denial of equal protection under the law; (2) vilations of Title VI of 1964 Civil Rights Act; (3) denials of procedural due process; and (4) denials of substantive due process."[23] In addition, future legal challenges to MCT may also hinge on allegations of educational malpractice.

Title VI and the Equal Protection Challenges

Most of the opposition to MCT has centered on the idea that the tests may discriminate disproportionately against minority students or students whose first language is not English. The suggestion is that this discrimination precludes these students from the cut-off level above which one receives a high school diploma instead of a certificate of attendance; although a substantial number of non-minority students test below the minimum standards.[24] Thus, school officials contemplating or implementing MCT programs must anticipate those allegations. Culturally neutral, fair testing becomes a prerequisite to any Title VI challenge.

The first MCT case alleging that the testing program discriminated inequitably against Black students has reached federal court in Flordia (Debra P. v. Turlington).[25] This case, filed in the Federal District Court for the Middle District-Tampa Division, seeks to protect the interests of ten Black high school students and all other similarly situated students who failed to meet Florida's minimum educational standards. The plaintiffs allege that the competency tests and the statute inequitably discriminate against Blacks, that the tests lack validity and reliability,

and that those skills measured by the tests differ from what is taught in schools. Rather than seek an injunction, the plaintiffs are attempting to prove the competency testing statute unconsitutional.

Title VI challenges of this type are especialy difficult to withstand in desegregated communities where (on one hand) one would like to find evidence that students are not regressing yet (on the other hand) one would want to identify those students with particular learning needs.[26] When test results contribute to the resegregation of students, one must take care to ensure that the constitutional rights of these students are not breached.[27]

This issue was, in fact, addressed by the United States Supreme Court in Gaston County, North Carolina v. United States[28] when it considered whether a literacy test or education requisites actually served to deny the right to vote to persons of certain race or color. It is important to note that once the state maintained separate and inferior schools for its Black citizens who were of voting age. Justice Harlan, speaking for the majority of the Court, stated that making education available equitably would prepare Black youths to meet the literacy standard when they reached voting age. Although Justice Harlan said the equalization of opportunities for parents is of little value,

> (We) cannot escape the sad truth that throughout the years, Gaston County systematically deprived its (Black) citizens of the educational opportunities it granted to its white citizens. "Impartial" administration of the literacy test today would serve only to perpetuate these inequities in a different form.

The case of McNeal v. Tate County School District[29] further expanded upon "prior effects" principle. Here, the court held that tests used to determine ability groups relied on the holding in Singleton[30] and Lemon.[31] That is, that the school districts must have operated for at least several

years as a unitary system. This criterion would suggest that a district had allowed sufficient time to assure that underachievers were not produced by past educational inequities. Thus, the court established the need for a school district to demonstrate it has eliminated the negative effects of past segregation by enabling underachievers to function on the same level as their peers.

Yet another area with which educators should be concerned is ability-grouping or tracking. The courts have not said that all such "classifications" are unconstitutional, even when a plaintiff has been able to establish a prima facie case. Establishing a prima facie case requires a plaintiff to prove (as one did in Hobson v. Hansen[32]) that the following incidents related postively to the testing program:

1. A racial imbalance existed between tracks or ability groups;
2. The standardized ability tests used to classify students were culturally biased against Blacks and other low income students; and
3. A woeful lacking of compensatory or remedial programs had the effect of keeping lower track students on the lower tracks.[33]

Critics of minimum competency testing also voice objections to minimum competency testing programs because of the potential problems they may represent for handicapped students. One problem, for example, is whether the prerequisite of competency standards for a high school diploma should apply to the handicapped. Of course, maintaining different educational standards for handicapped students is, itself, a potential problem. But, differentiated diplomas reflecting different standards should be addressed with caution.

Substantive and Procedural Due Process

Another agrument that has been raised against competency testing programs is that students denied a diploma may without proper notification have had their procedural due process as it relates to competency testing, educators must make certain a student has had sufficient time to protect his or her interest (Smith, 1978).[34] Generally speaking, prior notice and a hearing must be provided before an individual can be deprived of a constitutionally protected right, Therefore, one could argue that notifying students during their first or second year of high school is inadequate notice of a "minimum competency requirement for receiving a diploma."[35]

This issue of procedural due process was raised in Brady v. Florida State Board of Education.[36] In this case, John Brady, an eleventh grade student was required to take both a functional literacy and a basic skills test. On the functional literacy test in reading he scored in the 99th percentile and the 94th percentile in mathematics. Although he answered 91 percent of the items correctly on the basic skills test, he did not meet two of the 22 standards incorporated in the Basic Skills Test and stipulated by the State Board of Education in its Rule 6-A-1.941 as a required minimum competency for eleventh graders (Brady misused the apostrophe and used faulty capitalization). He was removed from his regular English composition class and required to enroll in an 18-week remedial course. But, because John Brady scored 90 percent on a pretest he was allowed to take an Independent Study.

The petitioner's father called the court's attention to the following requirements established by the Florida State Department of Education:

1. Students must master half of the skills and correctly answer 70 percent of the items in each component of the test.

2. A student must achieve one correct answer if there is one item on a particular skill, two correct answers for two items, up to nine. When ten or more items concern a given skill, the student must answer 70 percent correctly.

Since a public hearing had not been held, it was alleged that the cut-off scores were illegal. It was further contended that the 70 percent criterion and master performance standard had "worked in tandem to label John Brady as a failure statistic on a state, district, and school level.[37]

A hearing examiner in June, 1978, upheld the claim that the scoring criterion was invalid since it had not been promulgated in accordance with the Administrative Procedure Act.

Public Law 94-142

Another area of increasing concern to the vocational educator is the education of handicapped children. This partially the result of the Rehabilitation Act of 1973, Section 504 and Public Law 94-142. Rather than go into great detail concerning the implications these have for the vocational educator, I am only going to review the important part of section 94-142.

P.L. 94-142 sets forth six major principles that an SEA and an LEA must adopt in order to qualify for the federal funds: (1) zero reject, or the inclusion of all handicapped children in a free appropriate public education; (2) nondiscriminatory evaluation and classification; (3) education appropriate to the child; (4) placement in the least restrictive appropriate school environment; (5) procedural due process; and (6) the right of the handicapped to participate in decisions concerning their education.

Zero Reject

1. Full-Service Goals. The SEA and LEAs must adopt "full service goals" (Secs. 612(2) (A) and 614(a)(1)(C), (D), and (E) for planning purposes only; even if the SEA or LEA does not meet the goals. no sanctions may be imposed (see Fed. Reg., December 30, 1976, p. 56969).

2. Coverage--LEAs, Residential Facilities, and Private Schools. The requirements of full service and timely compliance apply to all public school agencies (Secs. 612(2)(A), 614 (a)(1)(C)(D), to certain private schools (Sec. 613(a)(4)(A) and (B), and to publicly operated residential facilities for the handicapped that provide elementary or secondary education (Secs. 612(1), 602(9), and 602(10).

3. Child Census. The SEA and LEAs must conduct an annual search to identify, locate, and evaluate all handicapped children in the jurisdiction who need special education and related services (Secs. 612(2)(C), 614(a)(1)(A).

4. Service Priorities. Congress required recipients to use the federal aid for two service "priorities" as follows (Sec. 612(3)): one to include handicapped children who are receiving no education (first-priority children); and the other to educate children, within each disability category, with the most severe handicaps who are receiving an inadequate education (second-priority children).

5. Appropriate Education and Functional Exclusion. The SEA and LEAs must provide an "appropriate" education to handicapped children (Secs. 601(C) and 612(1) and Fed. Reg., December 30, 1976, p. 56969).

6. Single-Agency Responsibility. A single state agency, the SEA (in North Carolina, the State Board of Education acting through the Department of Public Instruction), is responsible for assuring that the requirements of P.L. 94-142 are carried out.

Section 504. Sec. 504 of the Rehabilitation Act of 1973 provides that no recipient of federal funds shall discriminate against an otherwise qualified handicapped person solely on account of his handicap.

Improper Testing, Misclassification, and Inappropriate Placement

A child whose handicapp is not detected may not receive an appropriate education (Sec. 601(b)(5)). Misclassification, misuse of classification data, and discrimination as a result of the handicapped label can also keep him from receiving an appropriate education.

1. Nondiscriminatory Test Procedures. Each SEA and LEA must establish procedures to assure that testing and examination materials and procedures used to evaluate and place handicapped children will be selected and administered so as not to be racially or culturally discriminatory (Secs. 612(5)(C) and 614 (a)(7)).

2. Ceilings. Congress placed a ceiling on the number of children who may be counted for the purpose of receiving federal funds under P.L. 94-142 (Sec. 611(a)(5)(i) and (ii).

3. Due Process Hearing. Congress granted procedural safeguards - essentially a due process hearing -- to children who have been identified and evaluated as handicapped and placed in programs for the handicapped.

4. Sanctions. HEW may withhold funds from an SEA or LEA if it violates any provision of P.L. 94-142 (Sec. 616(a)).

5. Section 504. Section 504 recognizes that failing to offer the handicapped an appropriate education can result from misclassification or misplacement. Accordinly, they require evaluation before a child is placed, denied placement, or transferred; they prevent the misuse and misinterpretation of tests and test scores; and they avoid undue reliance on general intelligence tests (Sec. 84.35).

6. Appropriate and Individualized Education. An appropriate education (Sec. 612(1)) is achieved principally through the individualized education program (IEP). Each LEA is required (a) to establish or revise, whichever is appropriate, an IEP for each handicapped child within its jurisdiction at the beginning of each school year, and (b) to review and, if appropriate revise the IEP at least once a year.

7. Least restrictive appropriate placement. Procedural due process Right to participate in educational decisions/participating democracy.

8. Notice, consultation, and hearings. Access to records Advisory panels. Privacy of records

Due Process

There are really two types of due process -- procedural and substantive. Procedural due process refers to the procedures and methods employed in seeing to it that the laws and regulations are enforced. In most instances, the layment will be generally concerned with procedural due process. Substantive due process, by contrast, goes to the very heart of the law in question. It deals with the way the regulations, themselves, affect those it regulates. Thus, procedural due process deals with methods, and substantive due process deals with reasons, motives, and effects.

The question involved in substantive due process and education is whether the standard under adjudication has any casual connection with the educational function being provided. Sepcifically, with regard to suspensions of ten days or less, the Court found in Goss v. Lopez that due process would be achieved by the following procedure:

1. Notification of the specific charges orally and in writing.
2. Student should be presented with the evidence held by the school officials and given an opportunity to tell his side of the story.
3. There need be no delay between the time "notice" is given and the time of the hearing. That is, in the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred.
4. Time to allow for adequate preparation of defense.
5. Date, time or place of hearing.
6. In most cases, notice and hearing (informal or formal) should precede suspension or expulsion. However, there are times when immediate removal of a student may be appropriate. In those instances, a hearing must be held as soon as possible within 24 to 72 hours of the students' removal from school.
7. An explanation of the procedural rights afforded to the student at the hearing.

It stressed three minimal requirements applying in cases of severe discipline and growing out of fundamental conceptions of fairness implicit in procedural due process:

1. The student should be given adequate notice in writing of the specific ground or grounds and the nature of the evidence on which the disciplinary proceedings are based.
2. The student should be given an opportunity for a hearing in which the disciplinary authority provides a fair opportunity for hearing of the student's position,
3. No disciplinary action be taken on grounds which are not supported by any substantial evidence.

In addition, the court stated that within the limits of due process institutions needed the freedom for the development of various types of disciplinary procedures that would not only be consistent with their varying functions and processes, but would also be relevant to their lawful missions without putting an unreasonable strain on their resources and personnel.

Some further refinement deriving from recent cases follows:

1. There must be notice and some opportunity for a hearing before students may be expelled.

2. Notice of the specific charges two full days before the hearing constitutes sufficient time.

3. There need not be a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective.

4. Disciplinary proceedings need not be tested accoring to niceties of procedure required in court.

5. The technicalities governing the burden of proof in civil or criminal cases are irrelevant.

6. The findings of the hearing committee must be based on substantial evidence and may not be arbitrary and capricious.

7. The student must be granted an opportunity to produce evidence in his on behalf.

8. Testimony proffered against the student accused by members of the committee hearing his case is not such a denial of fundamental fairness as to deny due process in the absence of a showing of bias or prejudice.

Negligence

Negligence is a conduct falling below an established standard which results in injury to another person. Negligence differes from an intentional tort in that negligent acts are neither expected nor intended, while an intentional tort may be both anticipated and intended. While negligent acts are neither expected nor intended, a reasonable man in the position of the actor could have anticipated the harmful results.

The Reasonable Man

The reasonable man is a hypothetical person, a community ideal of human behavior, whose conduct under the same or similar circumstances is regarded as the measure of reasonable behavior, "a ficitious person who never has existed on land or sea." The reasonable person has been described by different courts as a reasonable and prudent person, a person of ordinary sense cautiously using ordinary care.

The reasonable man is a hypothetical person, whose conduct under the same or similar circumstances is regarded as the measure of reasonable behavior. The ordinary man in the street is held to a standard of conduct measured against what a reasonably prudent man would do in like or similar circumstances. Educators, however, are generally held to a higher standard commensurate with their training and experience. For educators and others in the education profession, the generally accepted standard would be that of a reasonably prudent educator not that of a reasonably prudent community member.

Professional Liability Insurance

Obviously situations like these adjudicated in the Wood, Goss, and Endress cases ought not happen in the first place. But they do. All administrators make mistakes from time to time. So it is logical to inquire into the kinds of professional liability insurance that are available to administrators. A number of professional education associations and organizations are currently reviewing the insurance situation.

Insurance contracts take basically two approaches. One is the "named-peril" approach, which indicates by name the danger it covers. For the most part, named-peril insurance is very comprehensive. It includes bodily injury and property damage; personal injury (false arrest, malicious prosecution, libel, slander, invasion of privacy, etc.); and professional liability (improper dismissal, expulsion, suspension, and other violations of a person's civil rights).

The second type of insurance covers "wrongful-acts" -- an all-risk approach that has the potential, at least, to offer broader coverage than named-peril insurance. Within this dual framework, several plans are offered. One, for example, covers the school board only. The policy usually names the "school district," "school board" or whatever and additionally includes the members of the school board individually. Some policies cover specified additional persons (principals, superintendents, etc.). Another plan offers coverage for "those listed above" plus all other employees (i.e. teachers). In a tenure or dismissal case, this type of policy might provide a defense for an insured person in an action brought by another insured person.

Coverage limits vary from $100,000 to $1,000,000 and up. It is important that individual limits be adequate, and equally important that the aggregate limit be adequate. Suits have a way of multiplying and awards tend to increase once walls have been breached. Thus student claims could involve large amounts. Some plans, like the Horace Mann plan for the teachers and the Belafonte plan offered by the National Association of School Affiliates for school boards, cover only the interests of their particular group, an arrangement that has certain obvious advantages.

Defense, settelement, and supplementary payments in nearly all policies are identical, a facet which constitutes the essential value of these policies. While pecuniary judgments are often awarded in Court, defense costs alone are frequently involved. Still, fees and other costs of litigation can be debilitating. Accumulated defense costs can play havoc with a school board budget, and fortunately expense of this type is covered under all the policies I have examined.

These policies underwrite the cost of defending a covered allegation, even though groundless and false. But one exception, no policy underwrites defense costs unless the suit alleges an act or omission that would, if found to be true, be covered under the insuring agreement. The one exception provides coverage for the defense of a suit alleging fraud or dishonesty; but coverage is withdrawn if the defendant is found guilty.

A survey of the various polices indicates that the "definitions" section of the contract can be very important. It spells out, for example, that "insured" means the board as an entity and also its members as individuals. "Wrongful act" is defined as any and all of the following: "actual or alleged erros; misstatements or misleading statements, acts, or

omission, or neglect, or breach of duty by the insured, individually or collectively, in the discharge of school district duties; or any matter claimed against the insured solely by reason of being or having been the insured during the policy period."

"Policy period" ought to be a fairly noncontroversial part of the policy. Not so. In fact, policies vary with regard to this feature. The annual inception-expiration date (or three-year dates, as some require) is fairly standard, but the prospective purchaser should be fully aware of the wording that covers the cancellation by the insured or by the company, in which only thirty to ninety days (or one year in some instances) is given to report any claims. After that, even though a claim had its origin during the policy period, coverage does not exist. For an additional premium (approximately 10 percent of the annual premium) this "discovery period" can be extended. Also, for an additional premium, a purchaser who has not present knowledge of actions leading to a possible claim or suit may purchase "retroactive coverage." This will provide coverage for claims that may be brought later but occurred or had their origin before the policy period began. Obviously, the insured and the company must agree upon the retroactive date.

The exclusions are predictable. There is no coverage for activities other than "school board activities;" acts involving a profit to the insured; criminal acts (even though the policy will provide a defense until the insured is found guilty); fraudulent or dishonest acts (if the defendant is found guilty); acts more appropriately covered under another type of policies (such as general liability); and willful violations of statutes or ordinances if done with knowledge and consent.

Most of these insurance policies base their premiums on the size of the student enrollment. Applications vary from three full pages of de-

tailed information to a short, four-line form. Prices run from $50 annually per board member, only $135,000 annually to cover board members and all employees for a large system.

The largest problem in this system of liability insurance lies with the "deductibles." While the deductibles are said to be "negotiable," the companines routinely require sizeable deductibles. For the smaller school systems, the figure may be $500, which is perhaps acceptable. Even this small amount, however, could deter capable people from seeking school board membership, especially since the deductible amount might have to be paid more than once a year defending groundless suits.

In the larger school sytems, deductibles of up to $5,000 per loss are normal, which seems to negate the purpose for which the policy was purchased. Whether the protection is secured for the board members only or for principals and teachers as well, the burden of paying the first $5,000 in loss (defined as any judgment and legal fees) would jeopardize financially all but the wealthy.

Competition and experience will ideally produce insurance coverage that meets school system needs adequately and at a reasonable cost. In the meantime, those who review the insurance programs in the schools should be alert to the changes that will come and be ready to update their program as better plans appear.

In general it has been found that most professional insurance policies indemnify the educational institution, associate, or organization, which in turn assures its members. A typical policy may cover civil cases only, eschowing the defense against criminal charges. It may reimburse the insured for attorney's fees up to $5,000, but with 15 percent deductible. It may provide for the settlement of a claim with or without the consent of the individual administrator. It may cover such matters as libel,

slander, or accidental injury or death of students, but not legal expenses incurred in loss of tenure suits or teacher grievance cases. Compensatory damages may be covered up to $500,000 per individual; however, punitive damages may not be covered at all.

In the more usual tort case for damages of cause, suit is brought and judgment taken against the college or university as employer, rather than against the individual administrator personally. Even in that situation, however, if the individual administrator is found to have acted outside the normal discharge of his or her duties; or outside the normal scope employment; or willfully, wrongfully, or with gross negligence, the individual administrator may be liable personally for damages rather than the employer.

The New York State Education Law Section 3028, requires defense of, but not payment of awards against, employees, and applies this law to criminal as well as civil actions. Nevertheless, the opinion of the State Comptroller 60-891 states that "It is further reasoned that in an action against a teacher or other school employee defended pursuant to Education Law Section 3028, if such defendant's position deos not prevail in the courts, it would be indicative that he had not acted in the proper discharge of his duties; therefore, the school district could, in no way, be held liable." Thus where the administrator loses a case, not only the award, but the attorney's fees, the expenses, and the court costs as well may become his responsibility.

Adminstrators are well advised to investiage the kinds of insurance coverage available at their institutions. At the same time, various professional education associations are moving as expeditiously as possible to provide initial or expanded professional liability insurance coverage for educational administrators.

A group of professional education associations has recently suggested that "wrongful or negligent" acts should be covered by liability insurance. It should include coverage of all claims arising out of alleged violations of laws concerning civil rights, due process, equal protection, and discrimination. It should contain provisions such as the following:

1. The insured must incluye the institution, its board, its board members, and its administrators.
2. The institution should be insured, not just reimbursed.
3. The insurance should contain provisions for "Prior Acts."
4. The notice of occurrence provision should not be less than 90 days.
5. The policy should contain an ample "discovery of claims" period.
6. It must cover wrongful or negligent acts, as well as errors of omission or commission.
7. The agency must defend actions seeking declaratory judgments or injunctive relief.
8. The agency must defend actions arising out of contractual obligations.
9. The policy should permit some degree of flexibility either by inclusion or exclusion.
10. It must defend criminal as well as civil acts.
11. It must underwrite punitive damages.
12. Deductible amounts should be optional and reasonable.
13. The agency must receive the consent of the insured before any settlement.
14. The policy should not exclude cases arising out of an institution's food service.
15. The policy should not contain a "Failure to Maintain Insurance" exclusion.

CONCLUSION

Prevention remains the best defense against lawsuits of the kind discussed here. Indeed, personnel evaluations in education should probably include an assessment of the steps an employee has taken to avoid legal action.

Educational administrators might consider the possiblity of initiating and maintaining an audit of litigation-prone situations in their institutions. For example, a review could be done of procedures used to handle all matters of potential sensitivity including both students and teachers. The student matters might include procedures for admissions, suspensions, and expulsions; procedures outlining prior restraint may be exercised over the publication of student newspapers; regulations formulating and enforcing grooming codes; and procedures for handling conduct that disrupts classes for search and seizure and for the operation of the placement office. Matters affecting teachers might include hiring, promotion, tenure, and termination procedures.

After their initial review, the administrators could modify and correct deficient procedures. Thereafter, regular periodic follow-ups should suffice to keep procedures in line with recent court decisions. This sort of regular, systematic review already takes place at many institutions with regard to financial matters.

The "audit" should also include a review of student and faculty handbooks to be sure that appropriate rules and regulations have been promulgated, along with sanctions for their violation, and that affected persons have been sent such handbooks and other materials that will keep them informed of both their responsibilities and their rights.

FOOTNOTES

[1]Joan C. Baratz and Terry W. Hartle. "Malpractice in the Schools," The Progressive, 41, June 1977, p. 33.

[2]Ibid.

[3]Ibid.

[4]Ibid.

[5]Sylvia Law and Stephen Polan. Pain and Profits: The Politics of Malpractice. New York: Harper and Row, 1978, p. 1.

[6]Joseph H. King, Jr. The Law of Medical Malpractice. St. Paul, MIN: West Publishing Co., 1977, p. 2.

[7]Law and Plan, loc. cit., p. 3.

[8]Ibid. p.5.

[9]Restatement, Second, Torts S 323 (1965).

[10]King, loc. cit., p. 37.

[11]Ibid.

[12]"Educational Malpractice," University of Pennsylvania Law Review, 124, 1976, p. 757.

[13]W. Prosser. Handbook of the Law of Torts. 685-6, 4th Ed. 1971.

[14]Educational Malpractice, loc. cit., p. 769.

[15]Ibid.

[16]Ibid.

[17]Peter W. and Donohue, supra notes 30 and 42 at 854 and 874.

[18]John Elson, "A Common Law Remedy for the Educational Harms Caused By Incompetent Or Carless Teaching," Northwestern University Law Review, 73, November 1973, p. 698.

[19]60 Ca. App. 3d, 823-4.

[20]Id. at 823.

[21]Peter W. Airasian, et. al. Policy Issues In Minimal Competency Testing and a Comparison of Implementation Models. Report submitted to the Policy Subcommittee of the Mass. Advisory Committee on High School Graduation Requirements, April 1978, p. 4.

[22]David G. Carter, Sr. "Proficiency Testing and the Law: An Old Problem With A New Twist," Speech, National Organization on Legal Problems in Education, New Orleans, LA, November 1978.

[23]Michael Smith, "Legal Considerations of Competency Programs," School Law Bulletin, ed. Robert E. Phay, Institute of Government: The University of North Carolina at Chapel Hill, October 4, 1978, p. 3.

[24]Merle Steven McClung. "Are Competency Programs Fair? Legal?," Phi Delta Kappan, 59, February 1978, p. 398.

[25]Docket No. 78-892 - Civ.-T-H. (1978).

[26]Carter, loc cit.

[27]Merle Steven McClung. "Competency Testing: Potential for Discrimination," Clearinghouse Review, September 1977, p. 442.

[28]89 S. Ct. 1720 (1969).

[29]508 F. 2d. 1017 (1975).

[30]Singleton v. Jackson Municipal School District, F 2d. 1211 (1969).

[31]Lemon v. Bossier Parish School Board, 444 F. 2d. 1400 (1971).

[32]269 F. Supp. 401 (D.D.C. 1967), aff'd sub. nom. Smuck v. Hobson, 408 F. 2d. 175 (D.C. Cir. 1969).

[33]Id. at 469-485.

[34]Smith, loc. cit.

[35]Mullane v. Central Hanover Bank, 339 U.S. 306.

[36]Case No. 78-653 R, Final Order, State of Florida, Division of Administrative Hearings, Tallahassee, Florida, June 15, 1978.

[37]Id. at 6-7.

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Wood placed school board member liability in the context of these prior cases: Tenny v. Brandhove, 341 U.S. 367 (1951) (§1983 does not eliminate the traditional immunity for acts done within the sphere of legislative action); Pierson v. Ray, 386 U.S. 547 (1967) (Common Law doctrine of judicial immunity is unaffected by §1983); and Scheuer v. Rhodes, 416 U.S. 232 (1974) (the governor, senior, and subordinate officers of state's national guard, and president of state-controlled university are entitled only to qualified, good-faith immunity).

APPENDIX

EFFECTIVE CLASSROOM DISCIPLINE

Good disciplinarians are not necessarily excellent teachers; excellent teachers are not necessarily good disciplinarians. Education cannot proceed without good discipline. Youngsters encouraged to lawlessness by one weak teacher make the work of their other teachers just that much more difficult.

Good discipline requires more than a "bag of tricks." It requires a basic philosophy from which specific techniques emerge. Good discipline is best though of as being positive - not negative. It is helping a pupil adjust to the requirements of his environment rather than punishment for his not having adjusted. It is turning unacceptable conduct into acceptable conduct.

GOOD DISCIPLINE may be described as a friendly, yet businesslike, rapport in which pupils and teachers work cooperatively toward mutually recognized and mutually accepted goals.

The following are techniques for disciplining students that may help you tremendously:

I. Be orderly. An orderly, well-run classroom set the stage for orderly conduct. Maintain a neat classroom. Establish set procedures.

II. Set behavior standards

a. Start the year with definite controls, it is always easier to slacken control than it is to "tighten up" after control has been lost.
b. Make sure your standards are reasonable and well understood.
c. Be consistent and fair.
d. Have class to draw up their own codes of conduct.

III. Keep students busy and motivated.

a. Get down to business at once.
b. Prepare your work beforehand. Plan so that all students will have enough work for the whole period.
c. Be definite. Lack of preparation is an open invitation for problem behavior.
d. Encourage good group conduct.
e. Relate your work to needs. Teach students the things that are meaningful to them.

IV. Be an adult.

a. You must be matured.
b. Self-controlled.
c. An adult example. Be yourself. Act your age.

V. Keep a positive attitude.

a. Negative dicipline should never be your basic approach.
b. Be kind, but firm; consistent. Be fair. A slow child may need more praise and encouragement than a bright one.

VI. Control your emotions.

a. Reject the behavior of the child, NEVER THE CHILD HIMSELF.
b. Don't argue. Never get involved in arguments with students.
c. No one is perfect. Be big enough, adult enough to admit your errors.
d. Try to project confidence, even if it requires acting.
e. Don't be afraid to show your sense of humor.
f. Don't threaten. Only the principal has authority to suspend.
g. Understand students' fads and don't belittle them (long hair, cornrow hair, earrings, hats, clothes, etc.).

VII. Group discipline.

a. Don't make an issue of everything. Spot REAL trouble and nip it in the bud before it becomes a major issue.
b. Reject undesirable student behavior but never the entire group.
c. Concentrate on the ringleader. If you can win him over, others will follow.
d. Don't punish the whole group because of the misbehavior of one.
e. Never give additional homework as punishment.
f. Try silence as a means of checking a misbehavior.
g. Recognize unacceptable behavior - a sympton:

The need for attention
Expression of fear
Expression of insecurity
The need for affection
Expression of resentment

h. Try to get at the root of the problem.
i. Be patient. It takes time to work out deepseated problems.
j. Don't put off contacting the office. Don't let a discipline problem drag on.
k. Avoid favoritism, this can be a real dilemma. Use your best judgment.
l. Avoid punishing when you are angry.
m. It is an important part of your job as a teacher to solve your own discipline problems before they need to be sent to the office.
n. DOCUMENT unacceptable conduct, after you have exhausted your resources, refer him to the office with a write-up.

GOOD GUIDANCE PRACTICES

1. Respect the "feelings" of a student.
2. Never reject a student. Reject bad behavior.
3. Never criticize nor reprimand a student in front of others.
4. Use a positive approach--encourage at all times.
5. Keep anecdotal records of significant and specific acts.
6. Always have a stimulating classroom environment: books, bulletin boards, centers of interest, tools, equipment, materials.
7. Don't make a crisis of everything.
8. Keep your voice low, clear, and firm. Don't shout or raise your voice to a high pitch.
9. Be fair, unemotional, and calm.
10. Avoid being placed on the "defensive" -- don't argue with students.
11. Discuss actions, not personalities.
12. Punishment is not always the answer.
13. Don't show negative feelings toward a child. Always let him know that you like him.
14. Don't make quick diagnoses.

ANSWER SHEETS

SERVING HANDICAPPED STUDENTS WHO ARE DISADVANTAGED:

A SENSITIZED EXPERIENCE

SELF-CHECK

Directions: For each of the statements below indicate your agreement with a "T" for a statement you believe to be true or an "F" for a statement you believe to be false in the space to the left of each statement.

_____1. Handicapped students must meet one or more of the following conditions: (1) trainable mentally retarded, (2) educable mentally retarded, (3) hard of hearing, (4) deaf, (5) speech and visually impaired, (6) emotionally disturbed, (7) orthopedically handicapped, (8) learning disability, and (9) other health impaired.

_____2. Difficulty in communicating or writing is one criterion used to identify handicapped students.

_____3. The Federal Register defines handicapped persons as persons who are mentally retarded, visually handicapped, seriously emotionally disturbed.

_____4. One of the organizational patterns used in the delivery of special education services on a regional basis is called tution contracting.

_____5. School psychologists are prepared to initiate and conduct research as well as design research which has implication for the school program.

_____6. Approximately 50% of the states have minimal guidelines for conducting special need programs.

_____7. There are only minor differences between the trainable mentally retarded and educable mentally retarded.

_____8. A person with a learning disability handicap exhibits a disorder in one or more basic psychological processes involved in the undertstanding or using spoken or written language.

_____9. The establishment of a regional education service center is another form of regionalization.

MODEL ANSWERS

LEARNING EXPERIENCE I

TRUE-FALSE

1. True
2. True
3. False
4. True
5. True
6. False
7. False
8. True
9. True

LEARNING EXPERIENCE II

LEARNING DISABILITY SAMPLE

Mages - Iucome Earned by Lador

Mages make ng that of iucowe from grohnctiou delouging to those who gerforw either weutal or ghysical lador. Mages are the grices galb for the lador and Wanageweut factors. The grice of lador in terws of money is the valne of lador.

The price of lador is beterwieub iu the sawe may as the price of any other ecouowic good or service. Supply of and bewaud for lador are the griwary factors that iufneuce mage rates. The snpply cousists of the morkiug force that is availableatagiveu time. The bewaud consists of the ueeds of ewgloyers for morkers.

CORRECT EXAMPLE
LEARNING EXPERIENCE II

WAGES - INCOME EARNED BY LABOR

Wages make up that part of income from production belonging to those who perform either mental or physical labor. Wages are the prices paid for the labor and management factors. The price of labor in terms of money is the value of labor.

The price of labor is determined in the same way as the price of any other economic good or service. Supply of and demand for labor are the primary factors that influence wage rates. The supply consists of the working force that is available at a given time. The demand consists of the need of the employer.